

APPEAL NO. 010467

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely report his alleged injury to the employer in accordance with Section 409.001; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the hearing officer's notice determination; thus, that determination will not be discussed further.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. There was conflicting evidence on the issue of whether or not the claimant injured his back lifting a mask at work. The hearing officer was acting within his province as the fact finder in determining that the claimant did not sustain his burden of proving that he sustained a compensable injury. As the fact finder, the hearing officer was free to reject the claimant's testimony as to how the accident occurred. In his discussion, the hearing officer specifically noted that "[o]verall, the claimant's evidence is not persuasive that he sustained an on-the-job injury as claimed." Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge